

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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8	MICHELE L. WILLIAMS,	)	No. 04-CV-0468-AAM
9		)	
10	Plaintiff,	)	ORDER DENYING PLAINTIFF'S
11		)	MOTION FOR SUMMARY JUDGMENT
12	v.	)	AND GRANTING DEFENDANT'S
13		)	MOTION FOR SUMMARY JUDGMENT
14	JO ANNE B. BARNHART,	)	
15	Commissioner of Social	)	
16	Security,	)	
17		)	
18	Defendants.	)	

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BEFORE THE COURT are cross motions for Summary Judgment. (Ct. Rec. 13, 15). Attorney Maureen Rosette represents the Plaintiff; Assistant United States Attorney Pamela Derusha and Special Assistant United States Attorney Stephanie Martz represent the Defendant. After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's motion for summary judgment and **GRANTS** Defendant's motion for summary judgment.

**I. JURISDICTION**

Michele L. Williams (Plaintiff) protectively filed for Disability Insurance Benefits and Supplemental Security Income on June 10, 2002. (Tr. 86, 478.) She alleged disability due to severe depression, bipolar disorder, anxiety attacks, major mood swings, long term fatigue, no concentration, tremors, and sleep disorder, with an onset date of January 27, 2001. (Tr. 105, 474.)

1 Her application was denied initially and upon reconsideration.  
2 (Tr. 43, 49.) She timely requested a hearing before an  
3 administrative law judge (ALJ), which was held on November 4,  
4 2002. (Tr. 52, 562.) ALJ R. J. Payne denied her application and  
5 the Appeals Council denied review, making the ALJ's decision the  
6 final decision of the Commissioner. (Tr. 6-9.) The instant  
7 matter is before the district court pursuant to 42 U.S.C. §  
8 405(g).

## 9 II. SEQUENTIAL EVALUATION

10 The Social Security Act defines "disability" as the  
11 "inability to engage in any substantial gainful activity by reason  
12 of any medically determinable physical or mental impairment which  
13 can be expected to result in death or which has lasted or can be  
14 expected to last for a continuous period of not less than 12  
15 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner is governed  
16 by a five-step sequential evaluation process for determining  
17 whether a plaintiff is disabled. 20 C.F.R. §§ 404.1520, 416.920.  
18 In steps one through four, a claimant must demonstrate a severe  
19 impairment and an inability to perform past work. *Erickson v.*  
20 *Shalala*, 9 F.3d 813, 816-17 (1993). If a claimant meets those  
21 requirements, the burden shifts to the Commissioner to demonstrate  
22 a claimant can engage in other types of substantial gainful work  
23 which exist in the national economy. *Id.* at 817 (*citing Gallant*  
24 *v. Heckler*, 753 F.2d 1450, 1452 (9<sup>th</sup> Cir. 1984)). To make this  
25 determination, the Commissioner must consider a claimant's age,  
26 education and work experience. 20 C.F.R. § 404.1520(f). See  
27 *Bowen v. Yuckert*, 482 U.S. 137, 107 S.Ct. 2287 (1987).

### III. STANDARD OF REVIEW

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001) the court set out the standard of review:

A district court's order upholding the Commissioner's denial of benefits is reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9<sup>th</sup> Cir. 2000). The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9<sup>th</sup> Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9<sup>th</sup> Cir. 2000).

### IV. STATEMENT OF THE CASE

Plaintiff was 37 years old at the time of the ALJ hearing. (Tr. 592.) She dropped out of school in the eighth grade, but completed her GED. (Tr. 578.) She has worked as a pawn broker, bus driver, survey interviewer, product demonstrator, flagger/pilot car driver, retail clerk and cashier. (Tr. 140, 599-600.) She also raced stock cars and roller skated competitively. (Tr. 569, 587.) For one month, she was employed by her sister as an escort car driver. (Tr. 588.) Plaintiff is a single mother of two young daughters with whom she lives alone. (Tr. 576.) Her mother lives in town and helps with the children

1 and housework. She also has two sisters who help her. (Tr. 596.)  
2 For transportation, Plaintiff depends upon her mother or the  
3 transit system. (Tr. 598.) Her driver's license was suspended  
4 for failure to pay fines. (Tr. 578.) At the time of the hearing,  
5 she had a protective payee. (Id.) Plaintiff testified that anxiety  
6 and depression were the primary medical problems that prevented  
7 her from working. (Tr. 579-80.) She testified that she slept  
8 most of the day when not caring for her children. She also  
9 watches television and reads, but stated she had few friends and  
10 no social activities. (Tr. 588-89, 591.) She was taking medication  
11 for her anxiety and depression which she testified gave her chest  
12 pains and caused extreme weight gain. (Tr. 467, 581.) She  
13 testified she could not lift more than ten pounds and had problems  
14 sitting and walking. (Tr. 582-83.)

#### 15 **V. ADMINISTRATIVE DECISION**

16 ALJ Payne applied the five-step sequential evaluation process  
17 for determining whether Plaintiff is disabled. At step one, he  
18 found she had not engaged in substantial gainful activity since  
19 2001; at step two he found she had the severe impairments of  
20 affective disorder (including major depression, major depressive  
21 disorder, an adjustment disorder with anxiety and depressive  
22 features, a mood disorder and bipolar disorder by history). He  
23 also found she had an anxiety disorder and personality disorder.  
24 (Tr. 30.) At step three, he found the impairments did not meet or  
25 equal the requirements of a listed impairment. At step four, he  
26 determined she had no exertional limitations and retained the  
27 functional capacity for a wide range of heavy, medium, light and  
28 sedentary level work. (Tr. 30-31.) As for Plaintiff's mental

1 residual functional capacity, the ALJ found she had some  
2 "moderate" functional limitations, but maintained an intact memory  
3 and the ability to understand and follow instructions and  
4 procedures. She could attend and persist on task, and her anxiety  
5 "was likely to diminish concentration on more complex/detailed  
6 tasks." (Tr. 31.) She would have difficulty tracking an  
7 irregular work schedule, but was able to sustain a regular work  
8 schedule and routine commute. He found despite her mental  
9 impairments, she could carry on superficial social interactions  
10 appropriately and had adequate intelligence to adjust to change,  
11 but due to her emotional lability, she may have difficulty  
12 responding to conflict with others and structuring her own  
13 efforts. (Id.) Based on the vocational guidelines and testimony  
14 from vocational expert Tom Moreland, the ALJ found Plaintiff was  
15 able to perform her past relevant work of escort driver. (Tr.  
16 605, 31.) The ALJ proceeded to step five and found Plaintiff  
17 could also perform a wide range of medium, light, and sedentary  
18 work in national economy. Specifically, he found she could work  
19 as an electronic assembler, laundry worker, agriculture sorter,  
20 kitchen helper, warehouse worker, document preparer, assembler and  
21 clip loading machine feeder. (Tr. 31-32.) He concluded Plaintiff  
22 had not been "disabled," as defined in the Social Security Act, at  
23 any time through the date of his decision.

## 24 VI. ISSUES

25 The question presented is whether the ALJ's decision is  
26 supported by substantial evidence and is free of legal error.  
27 Plaintiff contends that the ALJ erred when he: (1) improperly  
28 relied on the opinion of a non-examining psychologist over the

1 opinions of medical providers who treated and examined her, and  
2 (2) improperly rejected the opinions of her treating and examining  
3 mental health providers. (Ct. Rec. 14, p. 11-12). Plaintiff  
4 further contends that post-hearing treatment records and a  
5 psychological evaluation by Dennis Pollack, Ph.D., should be  
6 considered in the court's review. She argues that the new  
7 evidence constitutes a basis for reversal or remand of the ALJ's  
8 decision. (Ct. Rec. 14, p. 14-15).

## 9 VII. DISCUSSION

### 10 A. Evaluation of Medical Evidence

11 In a disability proceeding, a treating or examining  
12 physician's opinion is given more weight than that of a non-  
13 examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592  
14 (9<sup>th</sup> Cir. 2004); *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9<sup>th</sup>  
15 Cir. 2001) (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir.  
16 1998)); *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995);  
17 *Smolen v. Chater*, 80 F.3d 1273, 1285-88 (9<sup>th</sup> Cir. 1996); *Flaten v.*  
18 *Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9<sup>th</sup> Cir.  
19 1995); *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir. 1989). If a  
20 treating or examining physician's opinions are not contradicted,  
21 they can be rejected only with "clear and convincing" reasons.  
22 *Lester*, 81 F.3d at 830. If contradicted, the ALJ may reject the  
23 opinion if specific, legitimate reasons that are supported by  
24 substantial evidence are given. *See Flaten*, 44 F.3d at 1463; *Fair*,  
25 885 F.2d at 605. To meet this burden, the ALJ can set out a  
26 detailed and thorough summary of the facts and conflicting  
27 clinical evidence, state his or her interpretation of the  
28 evidence, and make findings. *Thomas v. Barnhart*, 278 F.3d 947,

1 957 (9<sup>th</sup> Cir. 2002) (*citing Magallanes v. Bowen*, 881 F.2d 747, 751  
2 (9<sup>th</sup> Cir. 1989)). Historically, courts have recognized internal  
3 inconsistencies, conflicting medical evidence, the absence of  
4 regular medical treatment during the alleged period of disability,  
5 and the lack of medical support for doctors' reports based  
6 substantially on a claimant's subjective complaints as specific,  
7 legitimate reasons for disregarding an examining physician's  
8 opinion. *Thomas*, 278 F. 3d at 957; *see also Flaten*, 44 F.3d at  
9 1463-64; *Fair*, 885 F.2d at 605. Further, the more consistent an  
10 opinion is with the record as a whole, the more weight is given to  
11 that opinion. 20 C.F.R. § 404.1527(d)(4). The ALJ does not need  
12 to accept the opinion of any medical source if it is conclusory,  
13 brief or unsupported by findings. *Matney on Behalf of Matney v.*  
14 *Sullivan*, 981 F.2d 1016, 1019 (9<sup>th</sup> Cir. 1992). Although deference  
15 is given to a treating physician's opinion, the determination of  
16 whether an impairment meets or equals a listing and the ultimate  
17 determination of disability are findings reserved solely for the  
18 Commissioner. *Tonapetyan v. Halter*, 242 F. 3d 1144, 1148 (9<sup>th</sup>  
19 Cir. 2001); *SSR 96-5p*.

20 Here, the ALJ summarized medical evidence from Dr. Bostwick  
21 and the agency psychologists who reviewed Plaintiff's medical  
22 records. (Tr. 25-27.) He also summarized generally the mental  
23 health records from Family Service Spokane and Spokane Mental  
24 Health, where Plaintiff received counseling and medication  
25 management services from Karen Johnson, M.S., Karen Bick, M.S. and  
26 Terry Patterson, ARNP. (Tr. 25.) He interpreted the mental  
27 health records as indicating Plaintiff's problems were situational  
28 and related primarily to financial stressors. (Id.) He noted

1 that both Dr. Bostwick and Plaintiff's mental health counselors  
2 reported that Plaintiff's symptoms were significantly improved  
3 with medication. (Id.) Plaintiff argues that the summary and  
4 interpretation are not adequate to reject the opinions of  
5 treatment providers that her symptoms are more severe than found  
6 by the ALJ. Specifically, she asserts the opinions of Ms.  
7 Patterson and Ms. Bick should have been given more weight than the  
8 non-examining psychologist upon whom the ALJ relied. (Ct. Rec.  
9 14, p. 11).

10 Regarding Dr. Bostwick's assessment, the ALJ properly found  
11 that in February 2001, Dr. Bostwick opined that Plaintiff's mental  
12 disorders were due to situational stressors, that she would  
13 respond to medication, and her symptoms were unlikely to persist  
14 more than one month. (Tr. 25-26, 251.) As discussed below, the  
15 evidence shows that Plaintiff's condition improved with medication  
16 and counseling at FSS, and her file was closed by August 2001.  
17 (Tr. 281.) The record indicates she did not return for mental  
18 health counseling until April 2002. (Tr. 285, 362, 368.) Thus,  
19 the ALJ's findings are consistent with Dr. Bostwick's opinions.

20 Regarding Ms. Patterson and Ms. Bick, the Regulations provide  
21 that mental health practitioners, such Ms. Johnson and Ms. Bick,  
22 are not acceptable medical sources to establish an impairment. 20  
23 C.F.R. § 404.1513(a). However, mental health therapists and nurse  
24 practitioners are "other sources" who may provide evidence of the  
25 effects of an impairment on a claimant's ability to work. 20  
26 C.F.R. §§ 1513(d)(1), 404.1529(c)(3). Although the Regulations do  
27 not provide specific guidelines for weighing the opinions of  
28 "other sources," generally, greater weight is given to an



1 acceptable medical source, but "other source" opinions may not be  
2 disregarded without the ALJ giving reasons that are germane to  
3 that witness. *Gomez v. Chater*, 74 F.3d 967, 971 (9<sup>th</sup> Cir. 1996);  
4 see also *Dodrill v. Shalala*, 12 F.3d 915, 919 (9<sup>th</sup> Cir. 1993).

5 Both Ms. Johnson and Ms. Bick had ongoing contact with  
6 Plaintiff, and their opinions regarding Plaintiff's limitations  
7 were considered by the ALJ in his determinations. The ALJ  
8 specifically stated that the diagnoses assessed by Ms. Bick and  
9 Ms. Johns were milder than those of the consulting and examining  
10 psychologists. (Tr. 25.) He also stated that their treatment  
11 records indicate her mental health problems were situational, and  
12 she did not suffer significant mental dysfunction from these  
13 problems. (Id.) Those findings by the ALJ are supported by the  
14 record.

15 Plaintiff saw Ms. Johnson from Family Service Spokane (FSS)  
16 off and on from 1998 until 2002. In 1999, when Plaintiff began  
17 counseling, Ms. Johnson noted Plaintiff suffered from depression  
18 and anxiety due to childhood issues, a troubled relationship with  
19 the father of her one child, and the death of her ex-husband.  
20 After stabilizing on medication, Plaintiff was discharged. (Tr.  
21 188-91.) In 2000, when Plaintiff resumed counseling, she had two  
22 daughters, and many situational stressors, including relationship  
23 problems, work, a threatened foreclosure on her house, and a new  
24 baby. (Tr. 221-22, 228, 230.) By January 2001, she had lost her  
25 job, but reported enjoying the time with her children. She was  
26 planning on returning to work (Tr. 243.) By February 2001, she  
27 was stabilized on medication and feeling good. (Tr. 268, 270.)  
28 In April 2001, Plaintiff reported her father was dying of cancer,

1 the father of her daughters had taken the children and not  
2 returned them, she had filed for a temporary restraining order and  
3 had spent time in jail for violating the order. (Tr. 273-78.)  
4 Ms. Johnson noted Plaintiff was "remarkably stable" in spite of  
5 these intense situational stressors. (Tr. 278.) Plaintiff's file  
6 was closed in August 2001 because she had a new boy friend, felt  
7 good and reported she no longer needed medication. (Tr. 281.)  
8 Plaintiff returned to FSS in April 2002, but was discharged for  
9 lack of contact. (Tr. 285-86.)

10 Medical records indicate Plaintiff began counseling sessions  
11 with Ms. Bick at SMH in May 2002.<sup>1</sup> (Tr. 368.) Plaintiff  
12 complained of panic attacks and depression, for which she was  
13 taking medication. Her house was in foreclosure, her water had  
14 been turned off, and her boyfriend had left. She was in the  
15 process of moving. By August 2002, Plaintiff reported housing was  
16 no longer a problem, and Ms. Bick observed Plaintiff was doing  
17 much better. (Tr. 372.) In October 2002, when Ms. Bick completed  
18 a psychiatric evaluation form, she noted marked and severe  
19 limitations, but indicated she did not expect impairments to last  
20 longer than 12 months. (Tr. 451-52.) In his summary of the  
21 evidence, the ALJ noted correctly that the limitations indicated  
22 by Ms. Bick did not meet the durational requirement for a  
23 disability. (Tr. 26.) See 20 C.F.R. § 404.1505 (a)(impairment  
24 must last or be expected to last for a continuous period of not  
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26 <sup>1</sup> In December 2000, Minerva Arrienda, M.D. from SMH was  
27 providing medication management. She noted Plaintiff was able to  
28 work and care for her children once she was treated with Depakote  
for depression. (Tr. 170.)

1 less than twelve months). Further, the ALJ specifically rejected  
2 the DSHS evaluations by Ms. Patterson and Ms. Bick, stating that  
3 they were completed to assist Plaintiff with housing assistance,  
4 and were not supported by the medical evidence.<sup>2</sup> (Id.) These  
5 reasons are germane to the therapists' motivation to obtain  
6 services for Plaintiff and the ALJ's interpretation of the  
7 evidence is supported by the record in its entirety. As discussed  
8 above, Plaintiff's treatment records do not reflect significant  
9 mental health difficulties of sufficient duration to be considered  
10 disabling under the Social Security Regulations. The evidence is  
11 adequate to support the ALJ's articulated reasons for the weight  
12 given to the opinions of Ms. Bick and Ms. Patterson regarding the  
13 severity of Plaintiff's limitations. See *Tackett*, 180 F.3d at  
14 1097.

15 The ALJ also considered reports from agency psychologists in  
16 his determination that the record did not support marked and  
17 severe levels of limitation. (Tr. 26-27, 266, 355-57, 408.)  
18 Consulting or reviewing psychologists, such as Drs. Kester,  
19 Underwood and Gardner, are experts in the Social Security  
20 disability programs, and the ALJ must consider their findings of  
21 facts about the nature and severity of an individual's impairments  
22 as opinions of non-examining psychologists. 20 C.F.R. §§  
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24 <sup>2</sup> Ms. Patterson also completed a psychiatric assessment in  
25 September 2002. (Tr. 429-31.) As revealed during the hearing,  
26 Ms. Patterson's report has many discrepancies regarding  
27 Plaintiff's history and family background, suggesting that Ms.  
28 Patterson was confusing Plaintiff with another patient and casting  
doubt on the report's reliability. (Tr. 491, 571.) It is  
reasonable that this assessment was given little, if any, weight  
by the ALJ.

1 404.1527(f) and 416.927(f). Further, in making residual  
2 functional capacity (RFC) findings, the ALJ must consider and  
3 evaluate any assessment of a claimant's RFC by a state agency  
4 psychological consultant or program psychologist. An ALJ must  
5 explain the weight given to these opinions, which can be given  
6 weight "only insofar as they are supported by the evidence in the  
7 court record." *SSR 96-6p*. ALJ Payne adopted the RFC of Dr.  
8 Gardner from September 23, 2002. (Tr. 28, 408.) This was  
9 reasonable in light of the fact that Dr. Gardner based his  
10 findings on a review of Plaintiff's entire record. His narrative  
11 adequately explains his findings. He noted that although  
12 Plaintiff had many situational stressors, her memory and  
13 concentration were intact. (Tr. 408.) This is consistent with  
14 the psychological evaluations from Dr. Kester in April 2001, (Tr.  
15 266), Dr. Underwood in August 2002, (Tr. 355, 357), and  
16 Plaintiff's counseling records. The acceptable medical sources  
17 concluded Plaintiff had mild to moderate levels of limitations,  
18 responded to medication and continued to function adequately,  
19 taking care of her children, herself and her home environment.  
20 (Tr. 266, 357, 431.) The ALJ further found that these conclusions  
21 were verified at the hearing by Plaintiff, who testified that she  
22 was able to take care of her own activities of daily living, shop,  
23 do laundry, cook, take parenting classes and take care of her  
24 children.<sup>3</sup> (Tr. 27, 589-90.) The ALJ did not err in his

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26 <sup>3</sup> The court notes that while the ALJ did not make a specific  
27 credibility finding in the Findings section of his decision, he  
28 made findings discounting portions of Plaintiff's testimony for  
clear and convincing reasons. (Tr. 27); see *Reddick*, 157 F.3d at  
722. Those findings have not been challenged.

1 evaluation of the medical evidence or in his reliance on the  
2 opinions of non-examining, acceptable medical sources.

3 B. New Evidence

4 On August 16, 2004, subsequent to the ALJ hearing and  
5 decision, Plaintiff was evaluated by Dennis Pollack, Ph. D. (Tr.  
6 551-57.) The Appeals Council considered the new evidence and  
7 found that the information did not provide a basis for changing  
8 the ALJ's decision. (Tr. 6.) Plaintiff argues Dr. Pollack's  
9 findings reflect impairments more severe than those found by the  
10 ALJ. (Ct. Rec. 14, p. 14). She contends this evidence merits a  
11 remand to the ALJ for further proceedings. (Id.).

12 In this circuit, when the Appeals Council specifically  
13 considers new evidence in the context of denying the claimant's  
14 request for review, the reviewing court considers the rulings of  
15 both the ALJ and the Appeals Council, and the record includes the  
16 ALJ's decision as well as the new evidence. *Gomez*, 74 F.3d at  
17 971; *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993). When  
18 considering new evidence as a basis for remand, the reviewing  
19 court must determine if the evidence is material and there is good  
20 cause for the late submission. 42 U.S.C. § 405(g); *see also Mayes*  
21 *v. Massanari*, 276 F.3d 453, 462 (9<sup>th</sup> Cir. 2001); *Bruton v.*  
22 *Massanari*, 268 F.3d 824, 827 (9<sup>th</sup> Cir. 1984) (new evidence is  
23 material if it "bears directly and substantially on the matter in  
24 dispute;" and "there is a reasonable possibility" it would change  
25 the outcome of the ALJ's decision). Based on this standard, the  
26 court declines to remand.

27 The new evidence presented does not differ significantly from  
28 evidence in the record before the ALJ. Treatment notes do not

1 indicate a significant worsening of symptoms. Ms. Patterson noted  
2 in October and November 2003, that Plaintiff was stable on her  
3 medications, showed no disturbance of mood and was no longer  
4 depressed. (Tr. 491-92.) Plaintiff's attendance at counseling  
5 was sporadic, and mental health problems were due to situational  
6 stressors, such as relationship issues and/or failure to take her  
7 medication. (Tr. 494-95, 497, 499.) When Dr. Pollack evaluated  
8 her in August 2004, ten months after the ALJ denied benefits,  
9 Plaintiff exhibited no unusual anxiety symptoms, there was no  
10 indication of hallucinations or delusions and her thinking was  
11 logical and progressive. (Tr. 551.) Dr. Pollack reported  
12 Plaintiff's objective test scores indicated that she was most  
13 likely exaggerating her difficulties. (Tr. 555.) He opined her  
14 test scores and presentation suggested a personality disorder with  
15 mixed features. (Tr. 557.)

16 Contrary to Plaintiff's argument, Dr. Pollack found Plaintiff  
17 had "no limitations" in the majority of her functions. (Tr. 558-  
18 59.) He found a "marked limitation" in her ability to "perform  
19 activities within a schedule, maintain a regular schedule and be  
20 punctual," and in her ability to "complete a normal workday or  
21 workweek without interruptions from psychologically based symptoms  
22 and to perform at a consistent pace without an unreasonable number  
23 and length of rest periods." (Tr. 559.) This appears to  
24 contradict his findings that Plaintiff had "no significant  
25 limitation" in her ability to maintain attention and concentration  
26 for extended periods and "no limitation" in her ability to sustain  
27 an ordinary routine without special supervision. (Id.) There is  
28 no explanation for this apparent contradiction, and Dr. Pollack's

1 narrative intimates the possibility of exaggeration by the  
2 Plaintiff. Consequently, the new evidence is inconclusive and  
3 does not establish a reasonable possibility that the opinions  
4 therein would change the outcome of the ALJ's determination.  
5 Therefore, remand is not warranted. Accordingly,

6 **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is  
8 **DENIED.**

9 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 15**) is  
10 **GRANTED.**

11 3. Judgment for the **DEFENDANT** shall be entered. The District  
12 Court Executive is directed to enter this Order, forward copies to  
13 counsel, and close this file.

14 **DATED** this 21<sup>st</sup> day of November 2005.

15  
16 s/ Alan A. McDonald

17 ALAN A. McDONALD  
18 SENIOR UNITED STATES DISTRICT JUDGE  
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